Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

OPPOSITION TO PETITION FOR DECLARATORY RULING OF THE POWER COALITION

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Dominion Energy South Carolina (f/k/a South Carolina Electric & Gas Company)
Florida Power & Light Company
Gulf Power Company
Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana
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EXECUTIVE SUMMARY

The POWER Coalition is comprised of investor-owned utility companies that collectively own and operate utility poles in several states.[1] Each member of the POWER Coalition collaborates regularly with communications service providers to that ensure advanced technology, and superior services are available in their respective communities; and to that end, each member of the POWER Coalition fully supports practical and fair pole attachment rules that promote the deployment of 5G and broadband services. However, consistent with Section 224, those rules must preserve the rights of utility companies to make final and determinative decisions with respect to **all** issues of capacity, safety, reliability, and engineering, and to receive compensation for pole access, and for the services that they provide. The relief requested in CTIA's oversteps the clear boundaries of Section 224, and would compromise not only the utility pole infrastructure, but also the current relationships between utility pole owners and communications attachers.

First, CTIA's request that the Commission mandate access to "light poles" conflicts with the explicit language of Section 224, undermines the statute's underlying purpose, and overlooks binding judicial precedent that limits the Commission's authority to electrical distribution poles. The Petition also incorrectly presumes that some undefined category of utility-owned "light poles" exists, of uniform size, height, girth, strength, and capacity. It does not. Moreover, because a utility pole owner's costs associated with "light poles" are not captured in any of the FERC accounts used to calculate the Section 224(e) "Telecom Rate," neither the statute, nor the FCC's current Telecom Rate formula, properly compensate utility pole owners for access to light poles. These infirmities are compounded by CTIA's failure to present any sound policy basis for the relief that it requests,

[1] The POWER Coalition consists of CenterPoint Energy Houston Electric, LLC, Dominion Energy South Carolina, Florida Power & Light Company, Gulf Power Company, Vectren Energy Delivery of Southern Indiana, and Virginia Electric and Power Company d/b/a Dominion Energy North Carolina and d/b/a Dominion Energy Virginia.

or to explain why negotiated arrangements do not provide access to suitable infrastructure for the deployment of 5G or broadband services.

Second, CTIA's request that the Commission declare unlawful **all** construction standards that restrict use of the unusable space is contrary to Section 224, and in any event, was rejected by the Commission just last year. Utility pole owners have clearly and consistently demonstrated to attachers that such restrictions are based on important capacity, safety, reliability, and engineering concerns, as Section 224(f)(2) permits. Because the concerns identified by utility pole owners with respect to certain attachment practices do not vary on a pole-by-pole, or location-by-location basis, CTIA's demand for a more specific evaluation is nonsensical, and undoubtedly would delay, rather expedite the deployment of 5G. Moreover, because the restrictions that CTIA complains of do not result in a complete denial of access to any pole, and because utility companies routinely provide alternative locations for auxiliary communications equipment, such restrictions are fully consistent with Section 224.

Third, CTIA's request that the Commission declare unlawful any bargained for exchange that deviates from its rules disregards the plain text of Section 224, and Congress's expressed intent at time that the Pole Attachment Act was passed. Both the statutory language and legislative history make clear that the Commission's pole attachment jurisdiction is not, and was never intended to be prescriptive. The Commission has consistently supported the types of negotiated solutions that CTIA now seeks to eliminate. Moreover, CTIA's Petition fails to offer the Commission any factual basis to warrant wholesale nullification of mutually beneficial, bargained-for exchanges in parties' private contractual agreements, and fails to demonstrate that the Commission's complaint process is inadequate to ensure that pole attachment terms are just, reasonable, and non-discriminatory.

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The members of the POWER Coalition,[2] by their undersigned counsel, and pursuant to the Public Notice of the Federal Communications Commission ("FCC" or Commission") in the above-captioned proceeding,[3] submit these comments in opposition to the Petition for Declaratory Ruling of CTIA, and respectfully request that the Commission reject CTIA's demands that it unlawfully expand the scope and breadth of Section 224 of the Communications Act, and its pole attachment rules.[4] ***First***, the Commission must reject CTIA's request for a declaratory ruling that profoundly re-defines the types of electric utility-owned structures under the Commission's Section 224 pole attachment jurisdiction to include an undefined category of "light poles." ***Second***, the Commission must reject CTIA's request for a declaratory ruling that prohibits **all** construction standards that restrict access to a pole's unusable space, without consideration of the capacity, safety, reliability,

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[2] The POWER Coalition members ("Pole Owners Working For Equitable Regulation") are: CenterPoint Energy Houston Electric, LLC, Dominion Energy South Carolina, Florida Power & Light Company, Gulf Power Company, Vectren Energy Delivery of Southern Indiana, and Virginia Electric and Power Company d/b/a Dominion Energy North Carolina and d/b/a Dominion Energy Virginia.

[3] Public Notice: Wireless Telecommunications Bureau and Wireline Competition Bureau Seek Comment On WIA Petition for Rulemaking, WIA Petition for Declaratory Ruling and CTIA Petition for Declaratory Ruling, WT Docket No. 19-250, WC Docket No. 17-84 and RM-11849, DA 19-913 (rel. Sept. 13, 2019). Because the POWER Coalition's comments are limited to the Section 224 pole attachment issues raised in CTIA's Petition for Declaratory Ruling, these comments are filed on in WC Docket No 17-84. *See also In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (WC Docket No. 17-84), Order Granting Extension of Time, DA 19-978 (rel. Sept. 30, 2019)(directing parties to file all comments that exclusively concern pole attachment issues only in WC Docket No. 17-84).

[4] Petition for Declaratory Ruling of CTIA – The Wireless Association, filed Sept. 6, 2019.("Petition" or "CTIA Petition")

or engineering concerns on which those standards are based. ***Third***, the Commission must reject CTIA's request for a declaratory ruling that effectively would invalidate all freely negotiated pole attachment terms and conditions that vary from the Commission's rules. The relief demanded by CTIA is contrary to the language and purpose of Section 224, and would not in any way expedite the deployment of broadband or 5G services.

I. INTRODUCTION

The POWER Coalition is comprised of six investor-owned utility companies ("IOUs") that collectively own and operate utility poles in six states. Each of the POWER Coalition members is impacted directly and indirectly by the Commission's pole attachment rules and jurisdiction:

CenterPoint Energy Houston Electric, LLC ("CEHE"). CEHE is a wholly-owned, direct subsidiary of CenterPoint Energy, Inc. (NYSE:CNP), with headquarters in Houston, Texas. CEHE provides electric transmission and distribution services in its Texas Gulf coast service area, which includes the City of Houston. CEHE maintains the wires, poles, and electric infrastructure used to serve its 2.4 million metered customers, across its 5,000 square mile Texas footprint.

Dominion Energy South Carolina ("DESC"). DESC, formerly South Carolina Electric & Gas Company, is a wholly-owned subsidiary of Dominion Energy (NYSE:D), with headquarters in in Columbia, South Carolina. DESC provides electric power service to nearly 730,000 customers, in its 22,000 square mile service area, across Central, Southern and Western South Carolina. DESC owns a substantial number of utility poles which support its power delivery operations.

Florida Power & Light Company ("FPL"). FPL is a wholly owned-subsidiary of NextEra Energy, Inc. (NYSE:NEE), headquartered in Juno Beach, Florida. FPL currently is the largest rate-regulated electric utility in the United States, as measured by retail electricity produced and sold, and serves more than 4.5 million customer accounts, or an estimated 10 million people, across

nearly half of Florida. FPL also is a prominent employer in its home state of Florida, with approximately 8,700 local employees. FPL owns a substantial number of utility poles, and other electric distribution facilities in its Florida service territory.

Gulf Power Company ("Gulf"). Gulf is a subsidiary of NextEra Energy, Inc. (NYSE:NEE), with headquarters in Pensacola, Florida. Gulf is an electric transmission and distribution utility that serves approximately 500,000 customers, across eight counties in Northwest Florida, and employs approximately 1,000 people. Gulf owns and operates 7,751 miles of electric distribution lines, and a substantial number of utility poles and other electric distribution facilities in its service territory.

Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Southern Indiana ("Vectren"). Vectren is a wholly-owned subsidiary of CenterPoint Energy, Inc. (NYSE: CNP), headquartered in Evansville, Indiana. Vectren delivers electric power to 144,000 customers in Southwestern Indiana. Vectren owns a substantial number of utility poles in its Indiana service territory.

Virginia Electric and Power Company ("VEPCO"). Virginia Electric and Power Company d/b/a Dominion Energy Virginia ("DEVA") and d/b/a Dominion Energy North Carolina ("DENC") is a wholly-owned subsidiary of Dominion Energy (NYSE:D). VEPCO is an electric transmission and distribution utility headquartered in Richmond, Virginia, that serves over 2.4 million customers in Virginia and North Carolina, collectively, using over 54,000 miles of electric distribution lines. VEPCO owns a substantial number of utility poles within its two-state service territory.

II. THE COMMISSION CANNOT "CLARIFY" THE WORD "POLE" IN SECTION 224 TO MEAN THE EQUIVALENT OF THE PHRASE "UTILITY-OWNED LIGHT POLES."

The CTIA Petition asks the Commission to declare that the term "pole," as used in Section 224, includes utility-owned "light poles."[5] Put another way, the Petition asks the Commission to "define the statutory term "pole" to include utility-owned light poles."[6] It risks stating the obvious, however, to note that the word "pole" is not equivalent to the phrase "utility-owned light pole." Indeed, the express language of Section 224 makes plain that the word "pole" includes only "local distribution facilities."[7] Because "utility-owned light poles" are not local distribution facilities, CTIA's request to redefine "pole" must be denied.

A. The Unambiguous Plain Language of Section 224 Precludes The Commission From Asserting Jurisdiction Over Utility-Owned "Light Poles."

A declaration that extend the Commission's pole attachment rules to "light poles" would greatly exceed the Commission's statutory authority and contradict existing case law.[8] Not only does the plain language of Section 224 foreclose the relief that CTIA seeks – these is also binding judicial precedent that Section 224 applies exclusively to a utility's "local distribution facilities."[9] Because an appellate court has ruled that the unambiguous language of the Act mandates such a conclusion, the Commission has no discretion to decide otherwise.

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[5] CTIA Petition at 22.
[6] *Id.*
[7] *Southern Company v. FCC,* 293 F.3d 1338 (11th Cir. 2002).
[8] *See* Opposition to Petition for Declaratory Ruling of Edison Electric Institute, the National Rural Electric Cooperative Association, and the Utilities Technology Council, WC Docket No. 17-84 at 5-9 (Oct. 30, 2019)("Utility Association Comments").
[9] *Southern Company,* 293 F.3d at 1344-45.

1. CTIA's demand for access to utility-owned "light poles" under Section 224 conflicts with the statute and the Eleventh Circuit's holding that Section 224 unambiguously applies only to "local distribution facilities."

Whether the Commission may interpret Section 224 to apply to utility-owned light poles must be determined under the familiar two-step process identified in *Chevron U.S.A., Inc. v. NRDC, Inc.*[10] Under *Chevron* step one, it must be determined whether the statue unambiguously speaks "to the precise question at issue."[11] If so, effect must be given to the clear intent of Congress.[12] If the statute is ambiguous as to Congress's intent regarding the question at issue, the FCC may make a reasonable interpretation of Congress's intent, which will be entitled to judicial deference.[13]

Because Section 224 unambiguously answers the precise question at issue, *i.e.*, that "pole" does not include utility-owned "light poles," the FCC may not decide otherwise. This conclusion is explained and mandated by the decision of the United States Court of Appeals for the Eleventh Circuit ("Eleventh Circuit") in *Southern Company v. FCC.*[14] In *Southern Company*, the Eleventh Circuit held: "[t]he text of the statute, coupled with the presence of this reverse-preemption clause, make it plain that the Act's coverage was intended to be limited to the utilities' local distribution facilities…"[15] The court explained that local distribution facilities were "comprised of substations, underground cables, poles, overhead conductors, transformers, service drops, and meters **that supply power to the customers**."[16]

The *Southern Company* court reached its conclusion under *Chevron* step one: "[a]pplying the *Chevron* test to the relevant FCC guideline, we find that the Act, when considered as whole,

[10] *Chevron U.S.A., Inc. v. NRDC, Inc.,* 467 U.S. 837, 842-45 (1984)
[11] *Id.* at 842.
[12] *Id.* at 842-43.
[13] *Id.* at 844-45.
[14] *Southern Company,* 293 F.3d 1338, 1343-45.
[15] *Id.*, 1345.
[16] *Id.*

speaks precisely to the question at issue. Our inquiry is therefore complete after the first step of the *Chevron* test." Based on the text of the statute, the reverse preemption provision of Section 224(c), and *Chevron* step one, the *Southern Company* court found "**Congress intended to limit the Act's application to local distribution facilities.**"[17]

Utility-owned light poles simply are not local distribution facilities. They do not "supply power to the customers" and they are not in any way a component of the facilities that are involved in supplying power to customers.[18] Instead, they are distinct, special purpose facilities custom-provided to light an area. Light poles are used exclusively to support lights. Electric power distribution facilities are not attached to light poles, and in fact, the only electric power that such poles receive is the power necessary to turn on the light. CTIA makes no argument to the contrary because it cannot. The FCC therefore cannot interpret Section 224, which applies only to local distribution facilities, to apply to light poles.

2. Under the United States Supreme Court's *Brand X* decision, the Commission is bound by the Eleventh Circuit's holding that Section 224 unambiguously applies only to "local distribution facilities."

The *Southern Company* holding that Section 224 applies only to "local distribution facilities" is binding on the Commission in deciding CTIA's petition.[19] The Commission therefore cannot "define," "clarify" or interpret the word "pole" to apply to anything other than "local distribution facilities," much less utility-owned light poles.

The United States Supreme Court's holding in *Brand X* makes the *Southern Company* decision binding here because the Eleventh Circuit reached its conclusion under *Chevron* step

[17] *Id.*, 1344 (emphasis added).
[18] *See* Utility Association Comments at 8.
[19] *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.,* 545 U.S. 967 (2005) ("*Brand X*").

one, holding that its construction of Section 224 flowed from the statute's unambiguous terms. As the Court explained in *Brand X*:

> A court's prior judicial construction of a statute trumps an agency construction otherwise entitled to Chevron deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion. . . . Only a judicial precedent holding that the statute unambiguously forecloses the agency's interpretation, and therefore contains no gap for the agency to fill, displaces a conflicting agency construction.[20]

The conclusion in *Southern Company* thus presents precisely the situation *Brand X* contemplated – a judicial precedent holding that the statute is unambiguous as to the question at issue, which therefore contains no gap for the agency to fill. The Eleventh Circuit held that Section 224 unambiguously applies only to local distribution facilities, so therefore no gap or ambiguity exists which would allow the Commission to interpret the Act to apply to facilities that are not local distribution facilities; *i.e.*, light poles. *Brand X* mandates that *Southern Company* forecloses the agency from exercising any discretion to reach a contrary construction of Section 224. The FCC therefore must deny CTIA's request to reinterpret the word "pole" to include facilities other than local distribution facilities.

B. Even if Section 224 were subject to the Commission's interpretation, regulating utility-owned light poles would be arbitrary, capricious, and contrary to law.

The *Brand X* and *Southern Company* decisions foreclose the possibility that Section 224 is ambiguous and open to the FCC interpreting it in a manner that provides mandatory access to facilities other than local distribution facilities. Even assuming for the sake of argument, however, that there is an ambiguity in Section 224 subject to the Commission's interpretation, it would be arbitrary, capricious, and contrary to law to apply Section 224 to utility-owned light poles.

[20] *Id.,* 982-83.

1. Regulating access to light poles and the rates, terms and conditions for attachment to light poles would interfere with state law and private agreements.

The CTIA Petition completely fails to address the reality that the ownership, use, and operation of light poles are subject to state law and private contracts. There are several examples which illustrate that subjecting light poles to regulation under Section 224 would lead the Commission to interfere directly with state law and private contracts with third parties.

First, in certain states, electric utilities provide light poles to customers pursuant to state commission-approved tariffs. Florida is one such state. There, both FPL and Gulf provide light poles to customers pursuant to tariffs. FPL, pursuant to its tariff filed with, and approved by the Florida Public Service Commission ("FPSC"), enters into standardized contracts with its customers for the provision of light poles.[21] Gulf Power does the same.[22] In these instances, use of the light pole, access to it, and any modification of it are governed by the FPSC-approved agreements between FPL or Gulf Power and their customers. Those agreements do not contemplate attachment of wireless antennas to the light poles. The FCC could not mandate access to such light poles, nor regulate the rates, terms, and conditions of access, without intervening in a state-sanctioned contract between an electric utility and its customer.

Second, in some states, such as Virginia, light poles are provided for newly constructed residential communities pursuant to private contracts. This is true for DEVA, where any light pole customer has express contractual rights regarding what is done with the light pole after it is constructed. Again, these agreements do not contemplate attachment of wireless antennas to the

[21] *See* Florida Power & Light Company, Street Lighting Agreement, available at https://www.fpl.com/rates/pdf/electric-tariff-section9.pdf (last visited October 28, 2019), attached as Exhibit A.

[22] *See, e.g.* Gulf Power Company, Customer-Owned Lighting Agreement, (Without Relamping Service Provisions), Rate Schedule OS (Part I/II), available at https://www.gulfpower.com/pdfs/rates/section7-form24-col.pdf (last visited October 28, 2019), attached as Exhibit B.

light poles. FCC regulation of light poles under these circumstances would impinge upon the contract rights of the customers, who are third-parties to any relationship between the electric utility and a wireless attacher.

Third, it is often if not typically the case that light poles are located in either public or private rights-of-way and, in many cases, on residential property. Any Commission regulation of access to, or use and maintenance of light poles on such property would be circumscribed by the applicable property rights. The Commission has acknowledged that pole attachment rights under Section 224 are subject to such property rights, as may exist, and which are available to the attaching entity.[23] When accessing public or private rights-of-way, the electric utility typically does not obtain property rights that allow for the placement of, access to, and maintenance of wireless antennas. The lack of such rights will substantially impede any use of light poles by wireless carriers, and thus the Commission's ability to regulate such use.

2. CTIA's Demand for Access to "Light Poles" is Vague and Overly Broad.

CTIA requests that the Commission declare that the word "pole" is equivalent to the phrase utility-owned "light pole." In so doing, CTIA takes a one-size-fits-all approach and incorrectly presumes that all utility-owned light poles are standardized, if not identical, in terms of construction, maintenance, and use. This is simply not the case.

Light poles come in all different shapes, sizes, and materials. The unique and varying dimensions and characteristics of light poles make mandatory access requirements infeasible, and in some cases, unlawful. Unlike typical distribution poles, which come in standard heights and "classes," and are typically made of wood, light poles vary greatly in height and girth, are made of

[23] *See Alabama Cable Telecommunications Ass'n*, Order, FCC 01-181, File No. PA 00-003, 16 F.C.C. Rcd. 12209, ¶ 28 (Rel. May 25, 2001).

different materials, such as metal and fiberglass, and are typically not as strong as wood distribution poles. They simply are not designed to support anything other than lighting, and thus lack the capacity to accommodate wireless communications attachments. Moreover, these poles also lack the capacity to support the ancillary equipment associated with wireless attachments, such as the necessary electrical components.

The lack of capacity on light poles would be made even worse by another facet of the CTIA Petition, which effectively requests the Commission to order that ancillary equipment be allowed in the "unusable space." Such mandated access on additional portions of light poles for still more equipment would make mandatory access to light poles for wireless antennas and equipment even more untenable and unsupportable.

3. The FCC's Current Telecom Rate Formula Does Not in Any Way Account for Attachments to Light Poles.

Another major obstacle to the CTIA's one-size-fits-all approach is that the FCC simply has never taken into account how light poles would fit within the current pole attachment regulatory framework. Light poles are not accounted for in the Commission's ratemaking approach for pole attachment fees.

First, the FCC has based its rate methodology for pole attachment fees on certain FERC accounts which electric utilities use for rate purposes. The FCC's ratemaking methodology for pole attachment rates includes certain specifically enumerated FERC accounts,[24] among them FERC account 364.[25] FERC account 364 is for "[p]oles, towers and fixtures," which includes "the

[24] *Amendment of Commission's Rules and Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of The Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, CS Docket Nos. 97-98, 97-151, 16 FCC Rcd 12103, ¶ 121 (2001).
[25] *Id.*

cost of installed poles, towers, and appurtenant fixtures used for supporting overhead distribution conductors and service wires."[26]

Light poles, however, are not accounted for in FERC account 364, as they are not "poles" used for supporting overhead distribution conductors and service wires," nor are they accounted for in any of the other FERC accounts employed in the FCC's pole attachment rate methodology. They simply are not part of the FCC's rate methodology. Instead, light poles are accounted for in a wholly separate account, FERC account 373, "[s]treet lighting and signal systems," which includes "the cost installed of equipment used wholly for public street and highway lighting…"[27]

Second, based on the typical characteristics of distribution poles, the FCC's pole attachment rate methodology has certain specified rebuttable presumptions. Calculations under the Commission's rules for the two statutory rate formulas are based on the rebuttable presumptions of one foot for space occupied by an attachment, and 37.5 feet for pole height, including 13.5 feet of usable space, and 24 feet of unusable space.[28] Calculations under the Commission's rules for telecommunication attachments also are based on the Commission's rebuttable presumption of an average of five attaching entities per pole in urban areas, and three in non-urban areas.[29] As described above, light poles come in all different shapes, sizes, and materials. The unique and varying dimensions and characteristics of light poles would render meaningless each of the Commission's rebuttable presumptions, and complicate the current rate methodology.

[26] 18 C.F.R. § Pt. 101.
[27] *Id*.
[28] 47 C.F.R. § 1.1410.
[29] 47 C.F.R. § 1.1409(c).

4. CTIA's Petition Presents No Sound Policy Basis to Dramatically Expand the FCC's Section 224 Pole Attachment Jurisdiction.

Ultimately, CTIA's Petition provides no sound policy rationale for the Commission to make a reasoned decision interpreting Section 224 to cover utility-owned light poles. Instead, the Petition relies on cherry-picked snippets from the Broadband Development Advisory Committee ("BDAC") report that are unrelated to the Commission's Section 224 jurisdiction over infrastructure controlled exclusively by electric utilities, and not involving the contractual rights of third parties.

Indeed, the Petition fails to explain why market-based arrangements are insufficient to ensure that wireless communications service providers have access to poles. The market for 5G deployment, including on light poles as appropriate, appears to be working well. While the Petition provides anecdotes of what the CTIA claims are unfair rates, it provides no market study, economic analysis, or even actual evidence that the market for 5G infrastructure, including light poles, requires regulatory intervention.

To the contrary, electric utilities do, in many cases, provide access to light poles where capacity exists, and such access would not be unsafe, or compromise the integrity of the pole. In addition, access is provided to those poles which actually do support electric distribution facilities, and also have street lights attached, as required under Section 224. Moreover, some electric utilities voluntarily provide access to wooden dedicated street light poles, subject to negotiated terms. Finally, electric utilities have worked with wireless companies to develop, construct, and deploy light poles that are specifically suitable for wireless attachments. The FCC's intervention in these efforts, and its regulation of a functioning market would serve first to upset successful negotiated arrangements. After that, it would serve to dis-incentivize electric utilities from accommodating wireless attachments by working to include them on existing light poles.

Such results would harm the wireless attachers by encouraging increased barriers to deployment. In addition, they would harm the electric utilities, despite CTIA's platitudes to the contrary. The electric utilities would suffer the harm of losing a free market opportunity while incurring the inverse burdens of increased regulatory compliance and mandated infrastructure management. The Commission should not try to fix what is not broken.

III. THE COMMISSION SHOULD NOT DECLARE REASONABLE, UNIFORMLY APPLIED CONSTRUCTION STANDARDS TO BE *PER SE* UNLAWFUL.

In its Petition, CTIA requests that the Commission endorse a wholesale ban of construction standards that limit access to the portion of the pole below minimum clearance, commonly referred to as the "unusable space". This relief was considered, and **denied** just one year ago, based on the Commission's judicious conclusion that the "better policy" is to defer to the expertise of the states, localities, and utility pole owners themselves with respect to pole attachment construction.[30] The 2018 Order also concluded that no factual basis exists to mandate certain uses of the unusable space.[31] The CTIA Petition offers no new or persuasive evidence that access to the pole's unusable space, specifically, is required by Section 224, or is necessary to further its purpose. Instead, CTIA relies exclusively on vague statements about the practices of unidentified utility companies,[32] most

[30] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, FCC 18-111, WC Docket No. 17-84, WT Docket No. 17-79, 33 FCC Rcd. 7705, ¶ 133-134 (Rel. Aug. 3, 2018)("2018 Order").

[31] *Id.*

[32] Without context, it is impossible for the Commission to evaluate whether any specific restriction on an attacher's use of the unusable space is just, reasonable, and non-discriminatory. For example, the Commission cannot know from the very sparse information provided in the CTIA Petition whether the utility companies alleged to impose unlawful restrictions on access to the unusable space have provided a capacity, safety, reliability or engineering rationale for such restrictions, and if those companies are not identified, they have no opportunity to provide support for their practices. Moreover, if the Commission cannot know from the information provided in the CTIA Petition where the alleged unlawful restrictions occur, and whether such restrictions are required by state law, or needed to comply with state law. Claims that a specific restriction on an attacher's use of the unusable space violates Section 224 should be addressed through the complaint process, where these facts are presented to the Commission, and where the alleged "bad actors" have a meaningful opportunity to provide justification for their practices.

of which occur in states that have reverse-preempted the Commission's jurisdiction.[33]

As explained in the comments of the Utility Associations, Section 224(f)(2) creates a clear and distinct exception to the statute's pole access requirements "where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes".[34] The statute expressly **permits** an electric utility pole owner to deny or restrict access to its poles, provided that any such denial or restriction is within the scope of Section 224(f)(2), and is nondiscriminatory.[35] Nothing in the text of Section 224 states or implies that a uniformly applied pole access restriction, based on any one of the considerations identified in Section 224(f)(2), is unlawful simply because it impacts more than a single pole, and the Commission has never endorsed that interpretation.[36] It should not do so here. A declaration by the Commission that prohibits **all** system wide restrictions on access to the unusable space, despite a demonstrated capacity, safety, reliability, or engineering concern, violates the rights of electric utility pole owners protected by Section 224(f)(2).

The Commission also has, since 1996, steadfastly maintained a policy of deference to state and local requirements that affect pole attachments, even where its jurisdiction has not been reverse preempted under Section 224(c).[37] Importantly, the Local Competition Order not only declined to

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[33] *See id.* at 21-22 and n. 69. As noted in the comments of the Utility Associations, the states of Connecticut, New Jersey, New York and Pennsylvania all have reverse preempted the Commission's jurisdiction. If the practices complained of in CTIA's Petition occur only (or even predominantly) in such jurisdictions, the declaratory ruling requested by CTIA would have no real legal effect. Moreover, CTIA's Petition fails to address whether certain restrictions on attachment in the unusable are required by state law in those jurisdictions, or necessary to comply with it.

[34] 47 U.S.C. § 224(f)(2). *See also* Utility Association Comments at 15.

[35] *Id.*

[36] To the contrary, in its 2010 Order, the Commission expressly permitted blanket prohibitions and restrictions on pole attachment techniques, provided that they are based on capacity, safety, reliability, or engineering considerations, and are applied in a non-discriminatory manner. *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order and Further Notice of Proposed Rulemaking, 25 F.C.C. Rcd 11864, ¶¶ 11, 13 (Rel. May 20, 2010)("2010 Order"). *See also* Utility Association Comments at 16.

[37] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96- 98, 11 FCC Rcd. 15499, ¶ 1154 (Rel. Aug. 8, 1996)("Local Competition Order"). *See also* Utility Association Comments at 19-20.

nullify such state and local requirements, but also affirmed the validity of the operational practices and procedures developed by utility companies based on those requirements.[38] The Commission's pole attachment rules are intended to prevail over state and local requirements only in cases where a complainant has demonstrated that such requirements are in **direct conflict** with federal policy.[39] The Petition fails to prove, or even allege, that a specific restriction on access to the pole's unusable space is inconsistent with, or violates the right of pole access provided under Section 224. To the contrary, in cases where members of the POWER Coalition prohibit certain uses of the unusable space – for any reason – these utility companies cooperate with attachers to provide technically feasible, alternative solutions that ensure reasonable and timely access to poles.

Of the six (6) utility companies that comprise the POWER Coalition, five (5) of those have implemented construction standards that place some form of restriction on an attacher's use of the unusable space. In each case, the restriction is narrowly tailored to resolve specific capacity, safety, reliability, and engineering concerns identified by the utility pole owner, and is communicated to all prospective attachers in advance of the application process.[40] Attachers are customarily offered the opportunity to discuss the pole owner's specific concerns to which the restriction relates, and if the attacher's proposed attachment design is not compatible with the utility pole owner's construction standards, the utility pole owner will work in full cooperation with the attacher to develop mutually acceptable revisions to the proposed attachment design. In all cases, construction

[38] *Id.* ("…we see nothing in the statute or record that compels us to preempt such local regulations as a matter of course. Regulated entities and other interested parties are familiar with existing state and local requirements, and have adopted operating procedures and practices in reliance on those requirements… Thus, even where a state has not asserted preemptive authority in accordance with Section 224(c), state and local requirements affecting pole attachments remain applicable, **unless a complainant can show a direct conflict with federal policy**.") (emphasis added).

[39] *Id.*

[40] *See, e.g.* CenterPoint Energy Pole Attachment Guidelines and Procedures (May 2019 Revision) at 14, available at: https://www.centerpointenergy.com/en-us/business/services/electric-utility/pole-attachments/?sa=ho.

standards that restrict access to, or use of the pole's unusable space are applied equally to all third party attachers, and to comparable equipment of the utility pole owner.

From the perspective of POWER Coalition members, the most profound safety hazard that results from the placement of equipment in the unusable space is that the pole cannot be climbed.[41] It is markedly more difficult to ascend the pole if any lower portion of the pole cannot be used by the climber for balance and traction. The likelihood of serious injury from a fall also is substantially greater if equipment protrudes from the pole. Relatedly, DESC has determined that some oversized equipment boxes, when placed in the pole's unusable space, create a safety hazard for pedestrians – particularly if such equipment boxes are not properly secured to the pole, or access to the adjacent sidewalk is blocked.

With respect to the reliability of the electric distribution system, CEHE and FPL have learned, from extensive storm restoration experience, that the presence of equipment in the unusable space makes pole removal and replacement more cumbersome in emergency situations. Because electric power service cannot be restored before the underlying pole infrastructure is serviceable, the speed at which storm-damaged poles can be removed and replaced after a natural disaster is an important factor in how quickly an outage is resolved. For utility companies that operate in storm vulnerable areas, such as FPL (Florida) and CEHE (Texas Gulf coast), restrictions on the use of the unusable space is a necessary part of their storm preparedness initiatives.

In certain "storm-hardened" jurisdictions, such as the State of Florida, FPSC-mandated storm hardening plans establish pole attachment standards – for example, maximum pole loads. Therefore, utility construction standards that restrict attachment in the unusable space to minimize

[41] *See also* 2018 Order at ¶ 144, Reply Comments of Ameren Corporation et al in WC Docket No. 17-84 at 24 (filed July 17, 2017), Reply Comments of the Coalition of Concerned Utilities in WC Docket No. 17-84 at 28 (filed July 17, 2017). Even in locations where poles are accessible by bucket trucks, climbing is the most commonly used practice for lineman to access electric lines.

pole load not only are buttressed by critical safety and reliability concerns – they are a fundamental component of many state law compliance plans. To the extent possible, FPL's construction standards require that all "non-critical" equipment be placed adjacent to the pole, rather than in the unusable space.[42] According to FPL, every additional load on the pole reduces the likelihood that the pole will survive storm force winds. However, on balance, FPL maintains that more resilient pole infrastructure prevents outages not only for utility customers, but also for the customers of cable television, telecommunications, and Internet service providers.

Importantly, in no case has a restriction on access to the pole's unusable space resulted in the complete denial of access to any pole. The reason for this is twofold. ***First***, the members of the POWER Coalition that restrict use of the unusable space also make available "exceptions" to their construction standards, in the rare case that a suitable alternative location cannot be found for the placement of a wireless service provider's auxiliary equipment. For example, FPL has established a process whereby an attacher may request special permission to access the unusable space, based on a showing of necessity, so long as safety can be maintained. ***Second***, the members of the POWER Coalition that restrict use of the unusable space cooperate fully with all attachers to provide mutually agreeable alternative solutions that ensure reasonable and timely access to poles.[43] In particular, both CEHE and FPL routinely make their respective operational teams available to meet with new attachers – in some cases, even before a pole attachment agreement is executed – to consider proposed attachment design specifications, in the context of their utility-specific construction standards.

[42] "Non-critical" equipment refers to any equipment that may be lawfully maintained on the ground, without adverse effect on the equipment's function.

[43] Requests to access the pole's unusable space typically are for the placement of auxiliary equipment, which can be safely and effectively accommodated in the pole's communications space, or on the ground, in close proximity to the pole. *See also* Utility Association Comments at 18-19.

Moreover, while CTIA would lead the Commission to believe that utility pole owners across the board arbitrarily ban all possible uses of the unusable space, that is patently untrue. For example, DEVA has determined that many poles within its distribution system can support equipment in the unusable space, and based on that determination, has developed a case-by-case review process for requests to access the lower portion of its poles. Similarly, DEVA's affiliate, DESC, has determined that wooden poles *without* electric distribution lines can safely support certain uses of the unusable space because the need for climb-ability is diminished. Furthermore, the added burden of equipment in the unusable space does not adversely impact emergency power restoration activities if the pole does not support electric lines. Although these poles are not even within the scope of Section 224, DESC has successfully negotiated reasonable attachment terms, which include a blended rental rate for access to the upper and lower portions of the pole.

IV. THE COMMISSION SHOULD NOT MAKE A DECLARATION THAT FORECLOSES BARGAINED FOR SOLUTIONS BETWEEN POLE OWNERS AND ATTACHERS.

The Commission should reject CTIA's request for a declaration that utilities and attachers are prohibited from seeking contractual pole attachment terms that conflict with the Commission's pole attachment rules.[44] This request contradicts the plain language of Section 224, and violates the Commission's consistent precedent in support of privately negotiated agreements.[45] CTIA provides nowhere near sufficient justification for such a radical reversal in current Commission policy, and offers no evidence to demonstrate that the Commission's rules already in place fail to ensure that communications companies are provided access to utility poles on terms that are just, reasonable, and non-discriminatory.

[44] CTIA Petition at 28-31.
[45] *See* Utility Association Comment at 23-25.

Contrary to CTIA's assertions, both the text of Section 224 and its legislative history affirm that the Commission's pole attachment jurisdiction was never intended to be prescriptive. When Section 224 was initially passed, Congress stated, in definitive terms, that the Commission "is not empowered to prescribe rates, terms, and conditions for CATV pole attachments..."[46] When the law was amended by the Telecommunications Act of 1996, Congress again emphasized that voluntary negotiations are intended to be the preferred means for setting the rates, terms, and conditions for attachments to utility pole infrastructure.[47] Accordingly, rather than instructing the FCC to develop rigid rules, Congress instructed the FCC to provide pole attachment "guidelines," and as necessary, to hear complaints.[48] Consistent with this intention, Section 224(b)(1) focuses on the FCC's complaint procedures, and not the substance of Commission's rules. Similarly, with respect to pole attachment rates, Section 224(e)(1) clarifies the limited nature of the Commission's jurisdiction, stating that the Commission should prescribe rules only "when the parties fail to resolve a dispute...".[49]

CTIA's Petition also distorts the FCC's historical preference for negotiated solutions. As CTIA concedes, the 2018 Order contains a clear reiteration of this well-settled policy:

> We emphasize that parties are welcome to reach bargained solutions that differ from our rules. Our rules provide processes that apply in the absence of a negotiated agreement, but we recognize that they cannot account for every distinct situation and encourage parties to seek superior solutions for themselves through privately-negotiated solutions.[50]

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[46] S. REP. 95-580, 15-16, 1978 U.S.C.A.A.N. 109, 123-24.
[47] Conference Report to the Telecommunications Act of 1996, S.652, S.Rep. 104th Congress, 2nd Sess. p.70.
[48] S. REP. 95-580, 15-16, 1978 U.S.C.C.A.N. 109, 123-24 ("The commission is not empowered to prescribe rates, terms, and conditions for CATV pole attachments generally. It may, however, issue guidelines to be used in determining whether the rates, terms, and conditions for CATV pole attachments are just and reasonable in any particular case.").
[49] 47 U.S.C. § 224(e)(1).
[50] CTIA Petition at 30 (citing 2018 Order ¶ 13).

In fact, with respect to its 2018 Order, the Commission recently reaffirmed before the United States Court of Appeals for the Ninth Circuit, that its rules do not, and are not intended to preclude private negotiations between pole owners and attachers. Specifically, the Commission's brief stated:

> The new rule shows "due consideration for the utilities' statutory rights" because it does "not preclude" utilities "from negotiating" agreements under which overlashers perform engineering studies and provide specifications in advance.[51]

Nevertheless, CTIA attempts to establish that other text found in the 2018 Order contradicts these statements, and requires further clarification by the Commission.[52] It does not. The narrow remark cited by CTIA refers specifically to the collective bargaining agreements between communications service providers and their third-party contractors ("CBAs") – and **not** to any agreement negotiated pursuant to Section 224. This distinction is critical, as CBAs are not part of the statutory framework that explicitly protects privately-negotiated pole attachment terms.[53] Thus, the 2018 Order requires no clarification on this point.

The Commission's preference for privately negotiated pole attachment terms is grounded in decades of precedent.[54] As early as 1996, the Commission clearly expressed its intent to refrain from any involvement in parties' private contractual matters, stating:

> This Order includes several specific rules as well as a number of more general guidelines that are designed to give parties flexibility to reach agreements on access to utility-controlled poles, ducts, conduits, and rights-of-way, **without the need for regulatory intervention**.[55]

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[51] *See* Brief for Respondents at 25, *American Elec. Power Serv. Corp v. FCC*, Case No. 19-7049 (9th Cir. Aug. 22, 2019)(citing *S. Co. Servs. v. F.C.C.*, 313 F.3d 574, 582 (D.C. Cir. 2002)).

[52] CTIA Petition at 30.

[53] *Id* (citing 2018 Order ¶ 50).

[54] *See also* Utility Association Comments at 23-25; *Amendment of Commission's Rules and Policies Governing Pole Attachments, In the Matter of Implementation of Section 703(e) of The Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, CS Docket Nos. 97-98, 97-151, 16 FCC Rcd 12103, ¶ 14 (2001); *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, CS Docket No. 97-151, 13 FCC Rcd 6777, ¶ 10 (1998).

[55] Local Competition Order at ¶ 1122 (emphasis added).

The following year, the FCC reiterated its desire to avoid prescriptive regulations, and to encourage voluntary negotiations between attachers and pole owners:

> … we note that the Commission's role is limited to circumstances "when the parties fail to resolve a dispute over such charges." Thus, negotiations between a utility and an attacher should continue to be the primary means by which pole attachment issues are resolved. We believe that an attacher must attempt to negotiate and resolve its dispute with a utility before filing a complaint with the Commission.[56]

And several years after that, the Commission took an even more aggressive stance with respect to negotiations, imposing a definitive requirement that parties negotiate in good faith before resorting to the Commission's complaint process.

> Indeed, we affirm, pursuant to our authority under section 224(b) of the Act, that both attachers and utilities have a duty to negotiate the rates, terms, and conditions of attachment in good faith, and to make a good faith effort to resolve disputes prior to seeking relief from the Commission.[57]

In addition to ignoring the plain language of Section 224, the clearly expressed intent of Congress, and well-settled Commission precedent, the declaratory relief requested by CTIA will harm, not help, relationships between utility pole owners and attachers. Without the opportunity to receive any reciprocal benefit in exchange for services provided ***in excess*** of what is required by law, pole owners would have no incentive to offer communications companies anything more than the bare minimum attachment right that the Commission's rules require. Moreover, utility pole owners would be unlikely to dedicate their resources to the collective development of attachment solutions that may improve the quality of attachers' service to their own customers. The mutually beneficial exchanges that exist now would be curtailed – even with respect to terms

[56] *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, Notice of Proposed Rule Making, FCC 97-234, CS Docket No. 97-151, 12 F.C.C. Rcd. 11725, ¶ 12 (Rel. Aug. 12, 1997).
[57] 2011 Order at ¶ 123.

that an attaching entity would enthusiastically accept in order to receive a valuable concession from the utility pole owner.

Importantly, CTIA also provides no support for its claim that pole owners demand unlawful rates or terms as a condition of attachment.[58] In fact, as of the date of these comments, a mere four complaints are pending before the FCC's Enforcement Bureau – and two of those involve the same parties.[59] Surely, if it were the universal practice of utility pole owners to demand pole attachment rates or terms in blatant violation of Section 224, use of the FCC's complaint process would be far more prevalent.[60] However, the lack of current complaints supports a conclusion that parties reach mutually acceptable pole attachment terms **without** involvement from the Commission in the vast majority of cases.[61] Because it is the "gray areas" of the Commission's rules and orders that most often tend to be the source of disputes between utility pole owners and attachers, a declaration that parties cannot seek terms "in conflict" with the Commission's rules would be of no avail. The FCC must not foreclose **all** private negotiations in the absence of actual record evidence of a widespread problem – which is something CTIA has not and **cannot** provide.

CTIA also provides no evidence that the Commission's current policies are insufficient to address disputes that cannot be resolved by a mutually acceptable agreement between the parties. For example, the Commission's "sign and sue" rule is designed to protect attachers from the perceived effects of unequal bargaining power, and removes any incentive to impose unlawful pole attachment rates or terms.[62] As recently as 2011, the FCC maintained that its "sign and sue" rule was effective for that purpose, stating as follows:

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[58] CTIA Petition at 28. *See also* Utility Association Comments at 27.
[59] *See EB - Market Disputes Resolution Division Pending Complaints*, FCC.GOV, https://www.fcc.gov/general/eb-market-disputes-resolution-division-pending-complaints (last visited October 18, 2019).
[60] *See* 2011 Order at ¶ 123.
[61] *Id.*
[62] *Id*. *See also* Utility Association Comments at 26-27.

> …we note that the sign and sue rule was adopted in recognition that in some situations, despite good faith efforts to reach agreement, an attacher may be forced to execute a pole attachment agreement containing what it believes to be unjust and unreasonable terms in order to gain timely access to the utility's poles. Although the sign and sue rule exists to address these situations, based on the relatively few complaints the Commission has received challenging the terms of executed pole attachment agreements, it appears that in most instances, parties are able to achieve an agreement that is acceptable to both sides.[63]

Because an attacher could successfully challenge an unlawful pole attachment rate or term as applied, any unlawful term would be unenforceable. Thus, despite CTIA's unsupported assertions to the contrary, utility pole owners already have no incentive to pursue rates, terms or conditions that the Commission would unquestionably discard in a complaint case, based on its black-letter rules.

V. CONCLUSION

For the reasons set forth herein, the members of the POWER Coalition urge the Commission to deny all declaratory relief requested in the CTIA Petition with respect to Section 224 of the Act and the Commission's pole attachment rules.

Respectfully submitted,

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[63] *Id* (internal references omitted).

Exhibit A

EXHIBIT A

FPL Account Number: _____

FPL Work Order Number: _____

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, _____

_____ (hereinafter called the Customer), requests on this ____ day of _____, _____, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries):_____

_____

located in _____, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed			Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Installed	Fixture Rating (in Lumens)	Fixture Type	# Removed

Poles Installed		Poles Removed		Conductors Installed	Conductors Removed
Pole Type	# Installed	Pole Type	# Removed		
				_____ Feet not Under Paving	_____ Feet not Under Paving
				_____ Feet Under Paving	_____ Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully):

_____

_____

_____

_____

_____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

(Continued on Sheet No. 9.101)

(Continued from Sheet No. 9.100)

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of $_____ prior to FPL's initiating the requested installation or modification.

3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.

4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.

5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.

6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rightsof-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

   a. the addition of street lighting facilities;
   b. the removal of street lighting facilities; and
   c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

   Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer- requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.

9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.

10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial ten (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.

11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.

(Continued on Sheet No. 9.102)

(Continued from Sheet No. 9.101)

12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.

13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance, and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.

14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.

15. In the event of the sale of the real property upon which the facilities are installed, upon the written consent of FPL, this Agreement may be assigned by the Customer to the Purchaser. No assignment shall relieve the Customer from its obligations hereunder until such obligations have been assumed by the assignee and agreed to by FPL.

16. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.

17. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are now written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

_____
Customer (Print or type name of Organization)

By:_____
Signature (Authorized Representative)

_____
(Print or type name)

Title:_____

FLORIDA POWER & LIGHT COMPANY

By:_____
(Signature)

_____
(Print or type name)

Title:_____

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: March 5, 2012

STREET LIGHTING FIXTURE VANDALISM OPTION NOTIFICATION

In accordance with the terms and conditions of Street Lighting Tariff Sheet Number 8.717,

_____(hereinafter called the Customer), selects on this _____ day of __, _____, from FLORIDA POWER AND LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following option(s) for addressing street lighting vandalism:

Please select one option under column **A** for street light fixtures that are eligible for protective shield installations and one option under column **B** for street light fixtures that are ineligible for protective shield installations.

A	**B**	
___	N/A	Upon the first occurrence of vandalism to any FPL-owned street lighting fixture, replace the damaged fixture with a shielded cutoff cobra head fixture. The customer shall pay a one-time charge of $280.00 per shielded fixture.
___	N/A	Upon the second occurrence of vandalism to any FPL-owned street lighting fixture, replace the damaged fixture with a shielded cutoff cobra head fixture. The customer shall pay a one-time charge of $280.00 per shielded fixture plus all associated installation and administrative costs.
___	___	Upon the second occurrence of vandalism to any FPL-owned street lighting fixture, repair or replace the damaged fixture with a like unshielded fixture. For this, and each subsequent occurrence, the customer shall pay the costs specified under the "Removal of Facilities" section of Street Lighting Tariff Sheet Number 8.716.
___	___	Upon the second occurrence of vandalism to any FPL-owned street lighting fixture, terminate service to the fixture. The customer shall pay the undepreciated value of the fixture.

Option selections will apply to all fixtures that FPL has installed on the Customer's behalf. Selection changes may be made by the Customer at any time and will become effective ninety (90) days after written notice is received.

By:_____
Signature (Authorized Representative)

_____
(Print or Type Name)

Title:_____

FPL Account Number:_____

FPL Account Number:_____
FPL Work Order Number:_____

PREMIUM LIGHTING AGREEMENT

In accordance with the following terms and conditions, _____

_____

_____ (hereinafter called the Customer), requests on this _____ day of _____, _____, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of premium lighting facilities at (general boundaries): _____

_____

located in _____ , Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed			Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Installed	Fixture Rating (in Lumens)	Fixture Type	# Removed

Poles Installed		Poles Removed	
Pole Type	# Installed	Pole Type	# Removed

(b) Modification to existing facilities other than described above (explain fully):

_____
_____
_____
_____
_____

Total work order cost is $_____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the premium lighting facilities described and identified above (hereinafter called the Premium Lighting System), furnish to the Customer the electric energy necessary for the operation of the Premium Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective Premium Lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive Premium Lighting rate schedule approved by the FPSC.

(Continued on Sheet No. 9.121)

(Continued from Sheet No. 9.120)

THE CUSTOMER AGREES:

2. To purchase from FPL all of the electric energy used for the operation of the Premium Lighting System.

3. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective Premium Lighting rate schedule on file at the FPSC or any successive Premium Lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this Agreement.

4. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Premium Lighting System.

5. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights of-way or easements required by FPL to accommodate the premium lighting facilities.

IT IS MUTUALLY AGREED THAT:

6. Modifications to the facilities provided by FPL under this Agreement, other than for maintenance, may only be made through the execution of an additional Premium Lighting Agreement delineating the modifications to be accomplished. Modification of FPL premium lighting facilities is defined as the following:

   a. the addition of premium lighting facilities;
   b. the removal of premium lighting facilities; and
   c. the removal of premium lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

   Modifications will be subject to the costs identified in FPL's currently effective Premium Lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

7. FPL will, at the request of the Customer, relocate the premium lighting facilities covered by this Agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL premium lighting facilities.

8. FPL may, at any time, substitute for any luminarie/lamp installed hereunder another luminarie/lamp which shall be of at least equal illuminating capacity and efficiency.

9. FPL will ensure the facilities remain in working condition and it will repair any facilities as soon as practical following notification by the Customer that such work is necessary. The Company agrees to make reasonable effort to obtain facilities for use in repairs or replacement to match the original facilities. The Company, however, does not guarantee that facilities will always be available as manufacturers of facilities may no longer make such facilities available or other circumstances beyond the Company's control. In the event the original facilities are no longer available, FPL will provide and the Customer agrees to a similar kind and quantity.

10. This Agreement shall be for a term of twenty (20) years from the date of initiation of service. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. At the end of the term of service, the Customer may elect to execute a new Agreement based on the current estimated replacement cost.

11. The Customer will pay for these facilities as described in this Agreement by paying
    a. a lump sum of $_____in advance of construction.

12. The monthly Maintenance Charge is $_____. This charge may be adjusted subject to review and approval by the Florida Public Service Commission.

13. The monthly Billing Charge is $_____. This charge may be adjusted subject to review and approval by the Florida Public Service Commission.

(Continued on Sheet No. 9.122)

(Continued from Sheet No. 9.121)

14. In the event of the sale of the real property upon which the facilities are installed, upon the written consent of FPL, this Agreement may be assigned by the Customer to the Purchaser. No assignment shall relieve the Customer from its obligations hereunder until such obligations have been assumed by the assignee and agreed to by FPL.

15. Should the Customer fail to pay any bills due and rendered pursuant to this Agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.

16. If the Customer no longer wishes to receive service under this schedule, the Customer may terminate the Premium Lighting Agreement by giving the Company at least (90) ninety days advance written notice to the Company. Upon early termination of service, the Customer shall pay an amount computed by applying the Termination Factors, as stated in rate schedule PL-1, to the total work order cost of the facilities, based on the year in which the Agreement was terminated. These Termination Factors will not apply to Customers who elected to pay for the facilities in a lump sum in lieu of a monthly payment. At FPL's discretion, the Customer will be responsible for the cost to the utility of removing the facilities.

17. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance, and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.

18. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.

19. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.

20. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are now written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

_____
Customer (Print or type name of Organization)

By:_____
Signature (Authorized Representative)

_____
(Print or type name)

Title:_____

FLORIDA POWER & LIGHT COMPANY

By:_____
(Signature)

_____
(Print or type name)

Title:_____

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: March 7, 2003

FPL Account Number: _____
FPL Work Order Number: _____

RECREATIONAL LIGHTING AGREEMENT

In accordance with the following terms and conditions, _____

_____

_____(hereinafter called the Customer), requests on this_____, day of _____, _____, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of recreational lighting facilities at (general boundaries): located in _____, Florida. This agreement is available and applicable only for customers, who, as of January 16, 2001 were either taking service under the Recreational Lighting Rate Schedule or had fully executed this agreement with FPL.

(a) Installation and/or removal of FPL-owned facilities described as follows:
See Attachment

(b) Modification to existing facilities other than described above (explain fully):

_____

_____

_____

_____

_____

_____

Total work order cost $_____.

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the recreational lighting facilities described and identified above (hereinafter called the Recreational Lighting System), furnish to the Customer the electric energy necessary for the operation of the Recreational Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective Recreational Lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive Recreational Lighting rate schedule approved by the FPSC.

(Continued on Sheet No. 9.131)

(Continued from Sheet No. 9.130)

THE CUSTOMER AGREES:

2. To purchase from FPL all of the electric energy used for the operation of the Recreational Lighting System.

3. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective Recreational Lighting rate schedule on file at the FPSC or any successive Recreational Lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this Agreement.

4. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Recreational Lighting System.

5. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights of-way or easements required by FPL to accommodate the recreational lighting facilities.

IT IS MUTUALLY AGREED THAT:

6. Modifications to the facilities provided by FPL under this Agreement, other than for maintenance, may only be made through the execution of an additional Recreational Lighting Agreement delineating the modifications to be accomplished. Modification of FPL recreational lighting facilities is defined as the following:

   a. the addition of recreational lighting facilities;
   b. the removal of recreational lighting facilities; and
   c. the removal of recreational lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

   Modifications will be subject to the costs identified in FPL's currently effective Recreational Lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

7. FPL will, at the request of the Customer, relocate the recreational lighting facilities covered by this Agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL recreational lighting facilities.

8. FPL may, at any time, substitute for any luminarie/lamp installed hereunder another luminarie/lamp which shall be of at least equal illuminating capacity and efficiency.

9. FPL will ensure the facilities remain in working condition and it will repair any facilities as soon as practical following notification by the Customer that such work is necessary. The Company agrees to make reasonable effort to obtain facilities for use in repairs or replacement to match the original facilities. The Company, however, does not guarantee that facilities will always be available as manufacturers of facilities may no longer make such facilities available or other circumstances beyond the Company control. In the event the original facilities are no longer available, FPL will provide and the Customer agrees to a similar kind and quantity.

10. This Agreement shall be for a term of twenty (20) years from the date of initiation of service. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. At the end of the term of service, the Customer may elect to execute a new Agreement based on the current estimated replacement cost.

11. The Customer will pay for these facilities as described in this Agreement by paying
    a. lump sum of $_____in advance of construction.

12. The monthly Maintenance Charge is $_____. This charge may be adjusted subject to review and approval by the Florida Public Service Commission.

(Continued on Sheet No. 9.132)

(Continued from Sheet No. 9.131)

13. The monthly Billing Charge is $_____. This charge may be adjusted subject to review and approval by the Florida Public Service Commission.

14. In the event of the sale of the real property upon which the facilities are installed, upon the written consent of FPL, this Agreement may be assigned by the Customer to the Purchaser. No assignment shall relieve the Customer from its obligations hereunder until such obligations have been assumed by the assignee and agreed to by FPL.

15. Should the Customer fail to pay any bills due and rendered pursuant to this Agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.

16. If the Customer no longer wishes to receive service under this schedule, the Customer may terminate the Recreational Lighting Agreement by giving the Company at least (90) ninety days advance written notice to the Company. Upon early termination of service, the Customer shall pay an amount computed by applying the Termination Factors, as stated in rate schedule RL-1, to the total work order cost of the facilities, based on the year in which the Agreement was terminated. These Termination Factors will not apply to Customers who elected to pay for the facilities in a lump sum in lieu of a monthly payment. At FPL's discretion, the Customer will be responsible for the cost to the utility for removing the facilities.

17. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance, and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.

18. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.

19. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.

20. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are now written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

_____
Customer (Print or type name of Organization)

By: _____
Signature (Authorized Representative)

_____
(Print or type name)

Title: _____

FLORIDA POWER & LIGHT COMPANY

By: _____
(Signature)

_____
(Print or type name)

Title: _____

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: March 7, 2003

(Continued from Sheet No. 9.131)

13. The monthly Billing Charge is $_____. This charge may be adjusted subject to review and approval by the Florida Public Service Commission.

14. In the event of the sale of the real property upon which the facilities are installed, upon the written consent of FPL, this Agreement may be assigned by the Customer to the Purchaser. No assignment shall relieve the Customer from its obligations hereunder until such obligations have been assumed by the assignee and agreed to by FPL.

15. Should the Customer fail to pay any bills due and rendered pursuant to this Agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.

16. If the Customer no longer wishes to receive service under this schedule, the Customer may terminate the Recreational Lighting Agreement by giving the Company at least (90) ninety days advance written notice to the Company. Upon early termination of service, the Customer shall pay an amount computed by applying the Termination Factors, as stated in rate schedule RL-1, to the total work order cost of the facilities, based on the year in which the Agreement was terminated. These Termination Factors will not apply to Customers who elected to pay for the facilities in a lump sum in lieu of a monthly payment. At FPL's discretion, the Customer will be responsible for the cost to the utility for removing the facilities.

17. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance, and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.

18. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.

19. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.

20. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are now written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

_____
Customer (Print or type name of Organization)

By:_____
Signature (Authorized Representative)

_____
(Print or type name)

Title: _____

FLORIDA POWER & LIGHT COMPANY

By:_____
(Signature)

_____
(Print or type name)

Title:_____

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: March 7, 2003

Fixtures (2)

Type (HPSV,MV,LED)	Manufacturer	Watts	Lumens	Color Temperature (LED Only)	Style	Existing Fixture Count (A)	# Installed (B)	# Removed (C)	New Fixture Count (A+B-C)

(1) Catalog of available fixtures and the assigned billing tier for each can be viewed at www.fpl.com/partner/builders/lighting.html

(Continue on Sheet No. 9.142)

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: March 7, 2017

(b) Modification to existing facilities other than described above (explain fully):_____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the lighting facilities described and identified above (hereinafter called the Lighting System), furnish to the Customer the electric energy necessary for the operation of the Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of $_____ prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Lighting System.

4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective lighting rate schedule on file at the FPSC or any successive lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.

5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Lighting System.

6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional lighting agreement delineating the modifications to be accomplished. Modification of FPL lighting facilities is defined as the following:

   a. the addition of lighting facilities:
   b. the removal of lighting facilities; and
   c. the removal of lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

   Modifications will be subject to the costs identified in FPL's currently effective lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. Lighting facilities will only be installed in locations that meet all applicable clear zone right-of-way setback requirements.

9. FPL will, at the request of the Customer, relocate the lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so and locations requested are consistent with clear zone right-of-way setback requirements. The Customer shall be responsible for the payment of all costs associated with any such Customer- requested relocation of FPL lighting facilities. Payment shall be made by the Customer in advance of any relocation.

(Continue on Sheet No. 9.143)

10. FPL may, at any time, substitute for any luminaire installed hereunder another luminaire which shall be of at least equal illuminating capacity and efficiency.

11. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.

12. In the event lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the fixture, pole, and conductor charges for the period remaining on the currently active term of service plus the cost to remove the facilities.

13. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.

14. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance, and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.

15. **This Agreement supersedes all previous Agreements** or representations, either written, oral, or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.

16. In the event of the sale of the real property upon which the facilities are installed, upon the written consent of FPL, this Agreement may be assigned by the Customer to the Purchaser. No assignment shall relieve the Customer from its obligations hereunder until such obligations have been assumed by the assignee and agreed to by FPL.

17. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.

18. The lighting facilities shall remain the property of FPL in perpetuity.

19. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are now written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

(Continue on Sheet No. 9.144)

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

_____	**FLORIDA POWER & LIGHT COMPANY**
Customer (Print or type name of Organization)	
By:_____	By:_____
Signature (Authorized Representative)	(Signature)
_____	_____
(Print or type name)	(Print or type name)
Title: _____	Title: _____

Issued by: S. E. Romig, Director, Rates and Tariffs
Effective: March 7, 2017

Exhibit B

EXHIBIT B

Section VII
Eleventh Revised Sheet No. 7.55
Canceling Tenth Revised Sheet No. 7.55

GULF POWER COMPANY
CUSTOMER-OWNED LIGHTING AGREEMENT
(WITHOUT RELAMPING SERVICE PROVISIONS)
RATE SCHEDULE OS (PART I/II)

Form 24

Contract No. _____

Customer Name _____Date_____

DBA _____Telephone No. _____ Tax I. D. _____

Street Address (Subdivision, etc.) of Light(s) _____

Billing Address _____

Driving Directions _____

No. of Light(s) _____ Location of Light(s) _____

Meter No. _____ Account No. _____ JETS WO No. _____

CUSTOMER-OWNED FIXTURE(S):

High Pressure Sodium

_____ 8800 Lumen (100 Watts) Light(s) to be billed at a base rate of $1.03 each per month $_____

All others to be billed as follows:

_____ Light(s) @ a base rate of $_____ * each per month (kWh for one light = _____) $_____
_____ Light(s) @ a base rate of $_____ * each per month (kWh for one light = _____) $_____
_____ Light(s) @ a base rate of $_____ * each per month (kWh for one light = _____) $_____
Total Base Monthly Charge** $_____

* This base rate per light is calculated by taking the kWh for one light and multiplying by $0.02517. Repeat this line for each different type of customer-owned light other than the 8800 Lumen light shown above.

** Base monthly charge does not include Fuel Charge, Purchased Power Capacity Charge, Environmental Charge, Energy Conservation Charge, Natural Disaster Recovery Surcharge, applicable taxes, or fees.

The Applicant requests the necessary electric energy for the operation thereof for the fixtures described above and hereby agrees to take and pay for the same in accordance with and subject to the Company's Rate Schedule "OS (PART I/II)" and Rules and Regulations for Electric Service on file in its office and on file with the Florida Public Service Commission or any changes therein as approved by the Florida Public Service Commission. This agreement and the monthly rates set forth above cover the electric service. The distribution system shall serve no other electrical loads except the lighting equipment described above.

ISSUED BY: S. W. Connally, Jr. **EFFECTIVE:** January 1, 2019

Form 24 (Continued)

Contract No. _____

In consideration of the supplying of said electric current, the Applicant hereby grants to Gulf Power Company, the right to construct, operate, and maintain upon, over, under, and across the premises located at the above service address its poles, lines, facilities, and appliances necessary in connection therewith for the transmission of electric power together with the rights of ingress and egress to and from said lines and the right to cut and keep clear all trees and other obstructions that may injure or endanger said lines. All equipment and material used in the construction, operation, and maintenance of said facilities shall remain at all times the property of Gulf Power Company. The contract term as provided by Rate Schedule "OS (PART I/II)" shall be for an initial period of _____ years and thereafter from year to year until terminated by three (3) months' written notice by either party to the other.

The location of said fixtures shall be as specified by the Applicant and the Company shall be held harmless in connection therewith or the use thereof. Should the Applicant discontinue this service before the expiration of the full term of contract, all unpaid charges for the full term shall immediately become due and payable. In the event the supply of electric current should be interrupted or fail by reason of accident, or condition beyond the control of Gulf Power Company, the service shall be restored within a reasonable time and such interruption shall not constitute a breach of the contract, nor shall Gulf Power Company be liable for damages by reason of such interruption or failure.

GULF POWER COMPANY	APPLICANT
Application Taken By _____	Applicant _____
Approved by _____ Authorized Company Representative	Title _____
	Date _____

ISSUED BY: Susan Story EFFECTIVE: January 31, 2006